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Japan - Commerce Treaty II

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DEPARTMENT OF STATE

Memorandum of Conversation

DATE: September 7, 1955

SUBJECT: **Tsurumi Property of Ford Motor Company**

PARTICIPANTS: **Mr. Joseph Frank, Washington Representative, Ford Motor Company**

Mr. Arnold Fraleigh, MA

COPIES TO: **American Embassy, Tokyo**
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DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY RR DATE 9-30-80

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Mr. Fraleigh asked Mr. Frank to come in in order to give him some of the information contained in the letter of August 23, 1955, from Peyton Barr to Edward Furman, concerning the Tsurumi property of the Ford Motor Company. Mr. Fraleigh explained that the Embassy thought it would be better for Ford to conclude settlement of its claim for war damage compensation before taking up with the Japanese Government the question of compensation for the use of the land by U.S. forces in Japan. Mr. Frank said that he understood Ford was close to a settlement with the Japanese Government on its claim for war damage compensation, and he agreed that it would be better to get this settlement out of the way before taking up the question of compensation for use of the land. Mr. Fraleigh told Mr. Frank that the Embassy had raised with the Japanese Government on a general basis, the question of permitting convertibility into dollars of war damage compensation payments, but that it appeared doubtful that the Japanese Government would be willing, at least at the present time, to liberalize restrictions on convertibility of such payments.

Mr. Fraleigh said that the Embassy had indicated that the question whether Japanese legislation provides for payment of full compensation for property used by U.S. forces, or only for an annual rental, has not been decided. He said that an authoritative interpretation of Japanese legislation on this point may be given by Japanese courts in the Daiichi Hotel case, in which the Japanese courts have filed suit. Mr. Frank was very much interested in this case and asked to be kept informed about its progress. Mr. Fraleigh said he had no information on when a decision might be rendered but that he would ask the Embassy to keep the Department fully informed.

Mr. Frank

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Mr. Frank said he thought that Ford would be entitled under the FCN Treaty to receive full compensation for the land in use by U.S. forces, rather than an annual rental. Mr. Fraleigh said he thought this was a ticklish point because the treaty might be interpreted to require the Japanese Government to provide compensation only to the extent of the property interest taken, and the Japanese Government could say that it had not taken full title but only a right to use the property for a temporary period. Mr. Fraleigh said that he understood the United States Government at various times had requisitioned the use of property for public purposes rather than full title to the property. It was agreed that this point could be more carefully considered when Ford is ready to seek compensation for the use of the land. By that time there may be a decision in the Daiiti Hotel case.

On the question of convertibility of any compensation paid for the use of the land, Mr. Fraleigh said that the Embassy had indicated it would be willing to take up this problem with the Japanese Government if compensation is received for the occupancy of the property. Mr. Fraleigh said that in the first instance such request would probably be made without reference to the FCN Treaty. He said that the Assistant Legal Adviser for Economic Affairs had outlined the conditions which would have to be established in order to justify a request for convertibility under Article XIII of the FCN Treaty. If Japan has foreign exchange in excess of its essential needs, it is under an obligation to make "reasonable provision" for conversion of compensation paid for the taking of property for public use, "giving consideration to special needs for other transactions". Mr. Fraleigh pointed out that Article XIII placed compensation for nationalized property ahead of payment of interest and dividends. The Japanese now permit payment of dividends at least on approved types of investments. Consequently, there would be a good basis for saying the Japanese should also permit convertibility of compensation for nationalized property. It was agreed, however, between Mr. Frank and Mr. Fraleigh that the subject of convertibility could be more carefully considered when the time comes for the Ford Motor Company to seek compensation for the use of the land.

Mr. Fraleigh again mentioned his belief that Ford might be sacrificing its right to obtain rental for current use of its property by the U.S. forces by failing to accept restoration of title to the land. He said he was concerned that Ford might, when it ultimately decided to ask for compensation, request the Japanese Government to pay for the use of the property for the entire period from 1945 to date. Mr. Frank at first thought that Ford might want to do just that. Mr. Fraleigh said that he believed the Japanese Government might consider itself under no obligation to pay for the use of the property prior to transfer of title back to the Ford Motor Company. Mr. Fraleigh said that he thought Ford could have been receiving compensation for the use of its property if it had accepted restoration of its title. He said that acceptance of rental payments might hamper Ford in obtaining full compensation, but that it was not necessarily inconsistent for Ford to accept rental payments while continuing to insist that it was entitled to full compensation. Mr. Frank seemed aware of the problem but still considered that Ford would not take steps at the present time to obtain restoration of its title.

Mr.

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Mr. Frank considered that the foregoing information was a satisfactory reply, for the time being, to the questions he had raised at previous meetings. (See Memo of Conversation of June 13, 1955 between Mr. Frank and Mr. Sebald and memo of conversation of July 12, 1955, between Mr. Frank, Mr. Maurer and Mr. Fraleigh.) Mr. Fraleigh said that when Ford was ready to seek compensation for the land, Mr. Frank should come in again and further consideration could then be given to the issues he had raised. Mr. Fraleigh said he would want to have other sections of the Department represented at such a meeting.

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DESP. NO.

December 27, 1955

DATE

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TO : THE DEPARTMENT OF STATE, WASHINGTON.

REF : CERP, D-6, 14

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SUBJECT: Foreign Investment: Japan Said Considering FCN Treaty Revision

Several recent press articles have stated that a proposal which would involve a change in the Treaty of Friendship, Commerce and Navigation between Japan and the United States is under consideration in Japan. The matter involves Article 15 of the Protocol of the treaty, which permits Japan to limit until October 1956 the purchase, with yen, by American nationals of outstanding shares in Japanese enterprises. A recent article in the Sankei-Jiji reported that MITI has decided to seek extension of this treaty provision for an additional three years after October 1956. Enclosure No. 1 is a copy of an article discussing the subject which appeared in the English-language Mainichi on December 20, 1955. A reliable MITI source informed the Embassy this his Ministry has reached no conclusion on the subject. He stated, however, that it is expecting recommendations soon from the Federation of Economic Organization which has circularized its members to obtain their views. It was principally at the instigation of this powerful private body that the Japanese Government demanded inclusion of Article 15 in the Protocol.

With a view to preventing future misunderstanding and friction, the Economic Counselor, with the approval of the Ambassador, on December 21 discussed the matter with Mr. Morio YUKAWA, Director of the Economic Affairs Bureau of the Foreign Ministry. The discussion centered around an informal memorandum, of which Enclosure No. 2 is a copy, which was left with Mr. Yukawa. The memorandum points out that any change in the treaty would have to be approved by the President and ratified by the Senate. In discussion of the matter, the Economic Counselor noted that should such a proposal be made by Japan, the attention of the Senate and the American public would be drawn to the unsatisfactory treatment which American investment in Japan has been accorded thus far. He added his personal opinion that the Senate would be unlikely to approve a change of this kind in view of the importance which current American foreign economic policy attaches to private investment.

Mr. Yukawa acknowledged that the matter has been discussed in Japanese Government circles, but stated that no concrete views have yet been formulated. In these discussions, he stated, the Foreign Ministry has opposed any attempt to seek a treaty revision while the Finance Ministry has been and remains the

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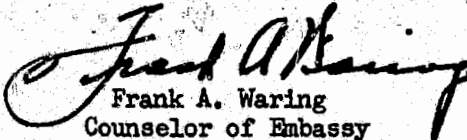
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From Tokyo

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From

principal protagonist. Mr. Yukawa stated that he was pleased to have the Economic Counselor's views and to have clarified that a treaty revision would have to be ratified by the United States Senate.

For the Ambassador:


Frank A. Waring
Counselor of Embassy
for Economic Affairs

Enclosures: 1. 

1. Copy of press article (Unclassified)
2. Copy of Informal Memorandum (Official Use Only)

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MAINICHI - December 20, 1955

ECONOMIC BEACON:REVISION OF FOREIGN INVESTMENT LAW
BECOMING QUESTION IN GOVERNMENT

By Z.Z.Z.

When the U.S.-Japan Commerce, Navigation and Friendship Treaty was concluded in 1953, the Law concerning Foreign Investment came under questioning. The law provides in its Article 11 that "A foreign investor desirous of acquiring stock or propriety interest . . . in a juridical person established under the Japanese laws and orders shall obtain validation of the acquisition concerned from the competent Minister in accordance with the ordinance of the competent Ministry."

The United States insisted on free acquisition by American investors of Japanese stocks, but finally agreed that the system shall be valid for three years as from the day of effectuation of the treaty. As it is to expire at the end of 1956 accordingly, the Government and other quarters concerned are becoming abuzz with discussions about amendments of the Law concerning Foreign Investment.

The Law concerning Foreign Investment, from the standpoints of "promotion of foreign investment" and "freedom of entrepreneurial activities," places outside of its restrictive scope in principle such foreign investors who do not claim repatriation of fruit of stock or propriety interest. According to the same law, however, acquisition of old stock, accompanying no capital increase, shall obtain validation of the acquisition from the competent Minister in any case. This is apparently to head off possible domination of management by foreign investors.

The U. S. contention was that such provisions on acquisition of old stock are contrary to the spirit of the commerce, navigation, and friendship treaty that provides to accord equal treatment to Americans in business activities in this country. But Japan turned down the American demand on the ground that as the third assets revaluation was yet to be carried out, stock prices did not correctly reflect the real value of assets of various enterprises.

How should this problem be solved? Two years ago Japan promised to lift restrictions on acquisition of stock. Today the third assets revaluation is in progress. Theoretically, nothing seems to oppose the relaxation of restrictions. As a matter of fact, not a few still harbor skepticism towards foreign investment. Why? One of the reasons seems to be that Japanese stocks are too low-priced to stem the flood of foreign capital. Another conceivable reason may be the constant apprehension that foreign investment, as is seen in recent cases, cause nothing but confusion in Japanese national economy.

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Opponents stress: "Although the Dow-Jones has soared to the ¥400 level, stock market prices in this country are comparatively low in view of the still high bank interest loan and high rate of stock yield. If, therefore, the door is open wide to the inflow of foreign capital, foreign investors will dominate the management of Japanese enterprise, which will after all result in the flight of capital."

I am not necessarily on their side. I would like to say that Japanese should be more self-confident in business activities. Of course, such foreign investment as to bring about confusion in national economy should be shut out, but so far as acquisition of stock goes, Japan should make a decisive step forward along the line of the U.S.-Japan Commerce, Navigation, and Friendship Treaty.

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MEMORANDUM

Recent press reports have stated that the Japanese Government may seek extension of Article 15 of the Protocol of the Treaty of Friendship, Commerce and Navigation between the United States and Japan, which permits Japan to limit until October 1956 the purchase, with yen, by American nationals of outstanding shares in Japanese enterprises. It is also understood that the Federation of Economic Organizations, a private organization, has requested the views of its members on the matter, and on the basis thereof will make recommendations to the Government.

The Embassy desires to note that this treaty has been approved by the President of the United States and ratified by the United States Senate, and that any change in the treaty would also have to be so approved and ratified. In the absence of such changes, the United States Government would, of course, look to observance of the treaty by the Government of Japan. The Embassy would be loathe to support or recommend a change of the kind reported to be under consideration by Japan.

December 21, 1955

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TO : THE DEPARTMENT OF STATE, WASHINGTON.

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	FE-4	IN RMIR-2 REP-2 OLI-6 E-5 L-2
	REC'D	OTHER
	3-5	21A-5 COM-12 TR-3 FRB-2 XMB-3

SUBJECT: Acquisition of Outstanding Shares in Japanese Enterprises by American For Yen

Direction to DC/R

The Treaty of Friendship, Commerce and Navigation between the United States and Japan, which came into effect on October 30, 1953, provides (Article VII) that:

"Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other business activities within the territories of the other Party.....(including the right) to acquire majority interests in companies of such other Party; and.....to control and manage enterprises which they have established or acquired.....Each Party reserves the right to limit the extent to which aliens may within its territories establish, acquire interests in, or carry on public utilities enterprises or enterprises engaged in shipbuilding, air or water transport, banking involving deposits or fiduciary functions, or the exploitation of land or other natural resources."

The Protocol to the Treaty, which was signed and came into effect at the same time as the Treaty, provides (Paragraph 15) that:

"During a transitional period of three years from the date of the coming into force of the present Treaty, Japan may continue to apply existing restrictions on the purchase by aliens, with yen, of outstanding shares in Japanese enterprises."

During the negotiations which led to the signing of the Treaty, the Japanese representatives proposed a five-year period during which the Japanese law against the acquisition of outstanding shares by aliens with yen would continue to apply. Their argument was that the current prices of Japanese stocks did not reflect the true value of the assets of the companies concerned. Due to the tremendous inflation of the yen in the postwar period, assets which were still carried on the books of companies at the prewar value in nominal yen were in fact worth hundreds of times the book value. A program had been instituted in Japan to revalue, in terms of the current inflated yen, the assets of corporations, and to increase the capitalization of the corporations in accordance with the newly assessed value. Such a program would, of course, result in many instances in

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rapid increases in the selling price of outstanding shares of stock. The Japanese position was that it would be harmful to Japanese corporations and to the national economy to allow aliens to use yen held in Japan to gain the profits which would accrue from this program. ^{1/} The United States, of course, opposed this proposition, but compromised on a three-year period during which the Japanese restrictive legislation would continue in force. That three-year period expires on October 29, 1956.

During December, 1955, articles began appearing in the press which indicated that Japanese business interests were unhappy with the thought that the present restrictions would expire within a year. It was reported that the Federation of Economic Organizations (FEO), Japan's most important industrial and business association, was canvassing its members on their attitude. It was indicated that the revaluation and increased capitalization of many firms had not yet been completed, but that also another idea, the fear of American domination of key firms, was an important factor in determining the attitude of the Japanese financial world. Newspaper reports related that the FEO survey showed about ninety percent of its members favored a further extension of the restriction on purchase of outstanding shares, and that the organization intended to ask the Japanese Government to negotiate a revision of the FCN Treaty towards that end.

On December 21, 1955, the Economic Counselor of the Embassy discussed this situation with Mr. Morio YUKAWA, Director of the Economic Affairs Bureau of the Ministry of Foreign Affairs. It was pointed out to Mr. Yukawa that an extension of the present arrangement would involve an amendment of the FCN Treaty; that the Embassy would not be able to recommend to the Department of State that such an amendment be agreed to; that even if the Executive Branch of the Government agreed to the amendment, it would have to be ratified by the Senate, which was unlikely to do so because no advantage would accrue to the United States therefrom. If such an amendment were brought before the Senate, it was stated to Mr. Yukawa, a general discussion of Japan's attitude toward foreign investment would likely ensue, and that the resultant criticism would adversely affect Japanese-American relations. Moreover, if the Senate were to refuse to ratify such an amendment, resentment against the United States would undoubtedly make itself felt in Japan. On the other hand, the Economic Counselor informed Mr. Yukawa, it appeared extremely doubtful that the Japanese fears were justified. To begin with, Americans desiring to invest dollars in Japan would surely seek the right of repatriation of capital and profits, and the Japanese Government could therefore continue to regulate such investments as it chose under the Foreign Investment Law; it was most unlikely that any American would change dollars into yen to buy outstanding stocks on the free market. The only

- ^{1/} The purchase of shares with foreign currency, with remittance abroad of profits and/or principal in foreign currency, is regulated under separate legislation based on the need to conserve foreign exchange, and recognized by Protocol Paragraph 6: "Either Party may impose restrictions on the introduction of foreign capital as may be necessary to protect its monetary reserves....."

funds which might therefore be applied towards the purchase of outstanding shares would be yen funds frozen in Japan. In this category the only substantial amounts of money are the nonconvertible yen which accrue to the Motion Picture Export Association (MPEA) out of income from the showing of American motion pictures in Japan, the frozen yen profits of American companies operating in Japan, and the war damage claims paid in blocked yen to American nationals by the Japanese Government under the Peace Treaty. In the first instance, it is of course the desire of the MPEA to convert its income to dollars for remission to the United States at the earliest opportunity. While the MPEA recently made a yen loan to Japanese interests for electric power development, the fact which made this loan attractive to the MPEA was the undertaking of the Japanese Government to convert interest and principal payments into dollars; control over loans of this type would continue to rest with the Japanese Government. The American companies were investing their yen profits in the expansion of their own companies. The only likely source of funds for the purchase of outstanding stock, therefore, would be the war damage claim yen which are on deposit in Japanese banks. The owners of these funds are now receiving the normal bank interest on their money, but it is possible that some of them might desire to invest in more profitable stocks. Such investments, however, would be for the purpose of gaining dividends, rather than for the purpose of gaining control of Japanese corporations, and in any event would not be made in such amounts as would constitute a danger to the Japanese economy.

For all of these reasons Mr. Yukawa was informed that the Japanese Government would be well-advised to check any move to reopen the provisions of the FCN Treaty for further negotiation. He replied that he understood the American position well and would look into the matter.

Subsequent reports indicated that the Ministries of Foreign Affairs, Finance, and International Trade and Industry had established a working-level committee to decide on the Japanese Government's attitude. News stories appeared to the effect that the Foreign and Finance Ministries held to the position that the international situation did not make it possible to ask the United States to amend the Treaty, while representatives of the Ministry of International Trade and Industry (MITI), under pressure from the FEO, felt that domestic considerations made it necessary to take the matter up officially with the United States. A paper entitled "An Opinion Concerning the Foreigners' Acquisition With Yen Currency of Outstanding Shares of Japanese Companies" was prepared and circulated privately by the FEO on February 1. A copy of that paper is enclosed.

With the concurrence of the Ministry of Foreign Affairs, the Economic Counselor presented the United States point of view to a number of influential leaders, including Finance Commissioner Gengo SUZUKI of the Ministry of Finance and Vice-President Kogoro UYEMURA of the FEO.

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On February 7 it was reported in the newspapers that MITI Minister ISHIBASHI had not accepted a recommendation from his subordinates that the Ministry definitely support renegotiation of the Treaty and had expressed the opinion that controls on purchases of stock by aliens were no longer necessary. An appointment was thereafter arranged at which the Economic Counselor discussed the Embassy's attitude with Mr. Ishibashi. The Minister reiterated his personal opinion that controls on stock purchases were no longer needed, but stated that it was not possible for the Japanese Government to disregard the expressed opinion of an influential segment of the business leaders, although he believed them unduly apprehensive, and that further consideration would therefore be necessary before the Government's final position could be decided. Information regarding this interview was released by a MITI official to the press, which published a factual account.

On February 21 the FEO installed as its new President Mr. Taizo ISHIZAKA, President of the Tokyo Shibaura Electric Company and also President of the Japan Productivity Center. On February 24 Mr. Ishizaka called at the Embassy and was briefed by the Economic Counselor on the problem of purchases of outstanding shares by foreigners. Mr. Ishizaka expressed forceful concurrence with the American point of view, and stated that in his opinion the Japanese business world needed to stop relying on government assistance in matters of this kind and stand on its own feet. He said that he would investigate the question of the factors which had brought about the FEO's recommendation that the Japanese Government ask the United States for an extension of the restriction now in force, and promised to prevent the exertion of pressure by his subordinates within the FEO on officials of MITI for continuation of the present controls.

After leaving the Embassy Mr. Ishizaka met with members of the press and reiterated to them his personal conviction that Japan should take no action to seek an extension of the present arrangement on stocks. A translation of a front-page article from the influential daily NIPPON KEIZAI of February 25 is enclosed. This article concludes, as did others, that Mr. Ishizaka's statement probably means the end of agitation for an amendment of the Treaty.

A number of subsidiary problems remain, however. The Japanese law prohibiting the purchase of outstanding shares by foreigners is still on the books, and the Japanese Government must decide what action to take. If the law were to remain as it stands, it would be expected, of course, that after October 29 nationals of the United States would, under the Treaty, be able to purchase with yen any stock which they desired and which was for sale. If this right were accorded American nationals, then it would follow that nationals of other countries having most-favored-nation arrangements with Japan would also demand and have to be accorded the same right. These rights would also extend, in the absence of any other arrangements, to the purchase of stock in utilities and other specified firms which the United States and Japan retain the right, under the Treaty, to limit to their own nationals. It therefore seems likely that the Japanese Government will draft legislation to repeal the present restrictions and to substitute therefor those restrictions which they would still be entitled to impose under the Treaty.

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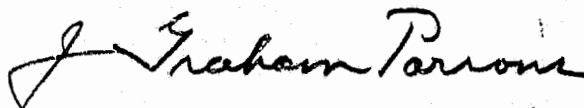
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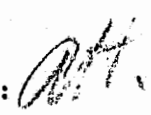
As a welcome by-product of this situation it has been pointed out in several quarters that the accumulation of yen in Japan by Americans, which is the basis for the fears of the Japanese community, is not a voluntary action on the part of the Americans concerned, but is forced by the policy of the Japanese Government which denies the privilege of conversion of these yen to dollars. Now that Japan has a sizeable dollar balance, it is argued, the root of the problem could easily be removed if the Japanese Government were to liberalize its policies and allow the free remittance abroad of profits and war damage payments. While it is not likely that this situation alone will persuade the Japanese Government of the wisdom of that course, it is possible that such action will in the long run be taken as the result of this and other stimuli.

The Embassy feels that in this instance prompt and effective action is likely to prevent the emergence of a problem which would tax the friendly relations between the United States and Japan, and that efforts to maintain close and mutually profitable contacts with Japanese government and business leaders have again proven their worth.

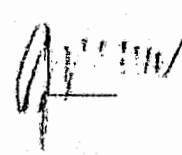
For the Ambassador:



J. Graham Parsons
Deputy Chief of Mission

Enclosures: 

1. Translation of article from NIPPON KEIZAI
2. "An Opinion Concerning the Foreigners' Acquisition With Yen Currency of Outstanding Shares of Japanese Companies"



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(Translation)

NIHON KEIZAI, February 25, 1956

For Relaxation of Restrictions on Acquisition of
Shares by Foreigners; Mr. Ishizaka Expresses
Concurrence with Economic Counselor Waring

Taizo ISHIZAKA, President of the Federation of Economic Organizations (FEO), had an interview with Mr. Waring, Economic Counselor, at the American Embassy, on the afternoon of the 24th at the latter's invitation, and discussed the problem of "restriction on acquisition of outstanding shares by foreigners." In this interview, Mr. Waring expressed the hope that the FEO would agree to the elimination of the restriction after November in accordance with the Treaty of Friendship, Commerce and Navigation concluded between Japan and the US. Since Mr. Ishizaka has, in a private capacity, agreed to this, he is likely to consolidate the opinion of FEO along this line in the future; thus it is anticipated that the pending issue will be solved once and for all by way of eliminating the restriction.

This problem has stemmed from the fact that the acquisition of outstanding shares by foreigners with accumulated yen accruing from releasing foreign films, etc. is under restriction until the end of October, and, should no measures be devised, the restriction would be eliminated as from November. When Mr. Ishikawa was President, the FEO made representations to the Government to the effect that it should conduct negotiations with the US Government for extension of the restriction for another year as a temporary measure. Among the Government agencies, MITI supported the stand of FEO, while the Finance Ministry and Foreign Office opposed it, with the result that no decision has been made on the formal attitude of the Government up to the present.

In the Ishizaka-Waring interview, Mr. Waring explained that (1) it would be difficult for the US to have a law passed for extension of the restriction for another year and (2) the control by American people of Japanese enterprises on account of the elimination of the restriction, as feared by the FEO, could not conceivably happen. Since Mr. Ishizaka has concurred with the explanation made by Mr. Waring, it is anticipated that the attitude of the Japanese side will be decided upon favoring the elimination of the restriction.

Concurred in a Private Capacity

President Ishizaka stated:

With respect to the problem of acquisition by foreigners of outstanding shares, the Finance Ministry, MITI Minister Ishibashi and the Japan Chamber of Commerce and Industry would seem to have taken the attitude that it is unnecessary to extend the restriction. I have heard that the FEO was opposed to the elimination of the restriction as the result of inquiries made of its members who expressed the desirability of extending the restriction. I, for

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one, do not think that foreigners would take control of Japanese enterprises, should they be permitted to acquire outstanding shares. If businessmen do not want to have their enterprises controlled by foreigners for this reason, they should devise measures, I think, to preclude such control. I stated to Mr. Waring that in a private capacity I did not think it necessary to extend the restriction.

Remaining Problem: "Accumulated Yen"; Easing
Remittance to Home Country Favored by Some in
Business Circles

Commentary:

Acting immediately on a suggestion made by MITI toward the end of last year to consolidate the opinion of its members on the problem of acquisition by foreigners of outstanding shares, the FEO conducted investigations with industrial, banking and securities firms which are members. Discussions were repeatedly held this year by representatives of various industries and representations were made to the Government on February 1, 1956, to the effect that (1) the restriction should be extended for one more year, and (2) even after the lapse of one year, prior approval should be obtained by foreigners for acquisition of outstanding shares when the ratio of total shares to be owned by them (to total capital) reaches a certain ratio (for instance, 20 percent), for the reason that the repletion of capital in the Japanese economy has not yet progressed, hence the unconditional elimination of the restriction is undesirable.

Among Government agencies, the Foreign Office and Finance Ministry have opposed the extension of the restriction for diplomatic reasons between Japan and the US, while MITI once expressed its opinion favoring the extension of the restriction in support of that of FEO. In the meantime, however, since MITI Minister Ishibashi stated in a press interview the other day that the "extension would be unnecessary" and since Mr. Fujiyama, President of the Japan Chamber of Commerce and Industry, indicated that "the elimination of the restriction would be in order," opinions of business circles have become diversified with the atmosphere favoring the elimination of the restriction growing stronger.

Under such a complicated circumstance, no formal attitude of the Government to face the Japan-US negotiations has been decided upon up to the present. Now that Mr. Ishizaka on the 24th expressed his concurrence with Counselor Waring's opinions, it is anticipated that the decision (of the Government) will be made and consolidation of the opinion of FEO along the line of Mr. Ishizaka will become certain when he prevails upon its members, inasmuch as he is of the strong opinion that the extension is unnecessary.

When it has been decided to eliminate the restriction, the movement of the accumulated yen remains to be seen. As the FEO has recommended to the Government (jointly with the extension of the restriction), strong opinions still prevail among business circles demanding that the implementation of

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fundamental policies is necessary to prevent an excessive accumulation of yen (for instance, by conducting more thorough examination of the context of foreign films to be released in Japan) or by easing the remittance of the accumulated yen to the home country in view of the improved balance of international payments.

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An Opinion Concerning the Foreigners'
Acquisition With Yen Currency of Outstanding Shares of Japanese
Companies

Date: February 1, 1956

Federation of Economic Organizations

The Foreign Investment Law now in force does not permit aliens to acquire outstanding shares of Japanese companies with the yen fund that has not been converted from foreign currency. According to the Article 7 of the Treaty of Friendship, Commerce and Navigation Between Japan and the United States (date of effectuation: October 30, 1953), however, the signatories are obligated to mutually accord national treatment in regard to business activities in their countries by each other's nationals. If no exception had been made of this article in the effectuation of the Treaty, the above-mentioned restrictions by the Foreign Investment Law would have of necessity been cancelled. This problem naturally drew attention during the course of negotiations for the conclusion of the Japan-US Treaty. This Federation, at that time, recommended that the restrictions on aliens' acquisition of outstanding shares with yen currency should be retained for some time in view of the actual economic condition of Japan and that the two countries should negotiate at a proper future time for the lifting of the restrictions. As a result of subsequent negotiations between the two countries, Item 15 of the protocol attached to the Treaty was written for the continuation for three more years of the above-mentioned restrictions.

This three-year term, however, is about to expire. Unless a new agreement is reached before the date of expiration, the Japanese Government must remove the restrictions at least for the US citizens as from October 30 this year. In other words, if the Japanese Government wants to continue the restrictions after that date, it must seek anew the understanding of the US Government, and if the latter does not give its consent, the Japanese Government would be obligated to remove the restrictions in conformity with the Treaty. Accordingly, the Japanese Government would be obligated to revise beforehand pertinent laws and regulations. Therefore, the Japanese Government is now confronted with the need to quickly determine its attitude on this matter.

This Federation has surveyed the opinions of business circles as to whether the above-mentioned restrictions should be removed or not, and has cautiously studied the matter. In the three-year period of grace, the economic rehabilitation of Japan has made a considerable progress but the accumulation of capital by enterprises is still lagging. And the stock prices do not sufficiently reflect the true value of the capital of enterprises. Therefore, there are no reasons to positively justify the removal of the above-mentioned restrictions. Japan will shortly conclude treaties of friendship, commerce and navigation with some more countries other than the United States and, in this connection, unconditional lifting of restrictions is not desirable. On the other hand, however, indefinite continuation of restrictions would run counter to the spirit of amity embodied in the Treaty of Friendship, Commerce and Navigation

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Between Japan and the United States—this we must avoid by all means. After weighing these two contradicting viewpoints, we have arrived at the conclusion that adequate measures should be taken to remedy the undesirable effects that the lifting of the restrictions might cause. Therefore, we recommend that the Government should seek the understanding of the United States Government for adoption of the following measures.

- 1) That the Government should seek the understanding of the United States for the continuation of the restrictions provisionally for one more year.

Reason:

(1) The Item 15 of the protocol attached to the Treaty of Friendship, Commerce and Navigation Between Japan and the United States permits the continuation of restrictions mainly because of the danger of foreign speculation on Japanese shares and foreign domination of Japanese enterprises through cheap acquisition of Japanese shares. There existed such a danger at that time, because the third revaluation of assets had not been carried out yet due to the delay in the economic rehabilitation of Japan, and the total value of shares of an enterprise was too small in comparison with the value of the enterprise assets. The third revaluation of assets was subsequently conducted and at the time of the May account settlement, last year, 93.6 percent of enterprises in Japan finished the revaluation procedure. Only 7.5 percent of the same enterprises, however, incorporated the revaluation reserve into their capital. According to the Temporary Measures Law for the Revaluation of Assets for Capital Substantiating of Enterprises, enterprises will not be allowed to pay dividends in excess of 15 percent of the face value of the shares for three years from the March settlement term of 1957, if they should fail to incorporate at least 30 percent of the revaluation reserve into their capital. As the internal reserve of enterprises has registered a remarkable increase since one year ago, the capital incorporation is expected to make a considerable progress by around October of 1957. Of course, the progress of the capital substantiation by enterprises does not completely liquidate the above mentioned danger but it mitigates the danger to a considerable extent. Therefore, we believe the continuation of restrictions for one more year is more logical than discontinuation in the light of the spirit embodied in Item 15 of the protocol which permits a three-year period of grace.

- (2) For the lifting of the restrictions on the acquisition of outstanding shares, the following preparations are considered to be of high necessity—and this will require a period of about a year.

- a) Since the prevention of excessive accumulation of non-convertible yen is the most basic pre-requisite, a full study should be made of such questions as the foreign films importation and the restrictions on the remittance of accumulated non-convertible yen.

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From Tokyo

- b) The business restrictions under the Treaty between Japan and the United States should be fully embodied in the domestic laws and regulations so that necessary safe-guard be given to the Japanese economy ever after the said lifting of the restrictions of outstanding shares.

II) That the Government should seek a prior understanding of the United States for adoption, after mutual consultations, of some restrictive measures for prevention of speculation or domination of Japanese enterprises by aliens through cheap acquisition of shares after the removal of restrictions.

Reason:

In view of the present extent of capital substantiation of enterprises, the danger of speculation or domination by aliens has not yet been completely eliminated. Therefore, it is not inconceivable that some aliens should attempt cornering of Japanese shares. In consideration of this danger, the Japanese Government should retain the right to revive some restrictions. Such a danger is very small indeed, if only Americans are to be considered. But indications are that other foreign countries will also demand equal treatment. Therefore, it is necessary to prearrange measures to cope with such eventualities.

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